

# **Theater Strategic and Operational Level Command and Control Warfare: The Legal, Moral, and Political Considerations of Leadership Targeting**

**A Monograph  
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Second Term AY 00-01

**SCHOOL OF ADVANCED MILITARY STUDIES**

**MONOGRAPH APPROVAL**

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Title of Monograph: *Theater Strategic and Operational Level Command and Control Warfare: The Legal, Moral, and Political Considerations of Leadership Targeting*

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## **ABSTRACT**

Theater Strategic and Operational Level Command and Control Warfare: The Legal, Moral, and Political Considerations of Leadership Targeting by MAJ Jeffrey W. Brlecic, USA, 52 pages.

The emerging operational environment of the United States military is characterized by a changing myriad of complex dimensions, the elements of which are often uncomfortably and in some cases drastically different from those encountered during the bipolar struggle of the Cold War. In the aftermath of the Cold War, the United States stands without peer in the realm of conventional militaries. US dominance in conventional military affairs creates an extreme asymmetric environment in which emerging adversaries perceive their only recourse to be an irrational form of unrestricted warfare. The challenge facing the US is how to psychologically prepare for and actively counter this extreme asymmetric threat. One of the most fundamental and possibly the most expedient way to counter this threat is through operational and strategic military leadership targeting. Unfortunately, military leadership targeting, often considered nothing more than assassination, is associated with various legal, moral, and political conventions that detract from its exploitation. This thesis will explore these conventions in order to answer the question: Is the physical destruction element of command and control warfare (C<sub>2</sub>W) an admissible shaping operation at either the theater strategic or operational levels of war?

This monograph examines the circumstances that originally fostered the association of military leadership targeting with assassination, demonstrating the legality of the former and the illegality of the latter. The legal disassociation provides a basis for scrutinizing the moral arguments for and against military leadership targeting so as to understand the moral acceptability of putting into action such a policy. Moral reservations overcome, the monograph analyzes the domestic and international political impact of conducting military leadership targeting, demonstrating how a clearly stated military leadership targeting policy, implemented under strict guidelines, could provide the US with a credible use of force to deter war, obtain advantage in war, or to facilitate war termination.

The monograph concludes that the legal, moral, and political disassociation of military leadership targeting from assassination provides the US with a legally, morally, and politically admissible shaping operation at both the theater strategic and operational levels of war.

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## CHAPTER ONE

### INTRODUCTION

The emerging operational environment of the United States military is characterized by a changing myriad of complex dimensions, the elements of which are often uncomfortably and in some cases drastically different from those encountered during the bipolar struggle of the Cold War.<sup>1</sup> Threats to US national security and vital interests challenge the well-defined boundaries of past political, legal, and moral constraints. Adversaries of the US are breaking free of established norms in their efforts to obtain advantage over the United States' global military dominance. Their approaches vary from the symmetric use of similar means in typical ways to the asymmetric use of dissimilar means in atypical ways. The latter approach provides an adversary with an unrestricted method of warfare characterized by uncontrolled chaos with an inherent potential for brutality heretofore not witnessed by US planners.

Clausewitz came close to describing this unrestricted warfare in his theoretical ponderings of what he called absolute war. Clausewitz' absolute war falls short of unrestricted warfare in that although all moral and political constraints are removed, the large amounts of death and destruction he envisioned would be restricted to the clashing forces and others who retained an irrational will to fight. Clausewitz did not envision his absolute war as transcending beyond a logical step-by-step linear escalation. His concept of absolute war had a distinct time-space sequence. Moreover, he presented absolute war as purely conceptual. He believed it unlikely to engulf the entire body of humankind in

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<sup>1</sup> Student Text 3-0, *Operations*, (U.S. Army Command and General Staff College, Fort Leavenworth, KS, 19 October 2000), 1-7. The manual lists six dimensions of the operational environment: threat, political, unified action, land combat operations, information, and technology. This student text is an official U.S. Army publication that reflects future doctrinal concepts. This student text is the final draft of FM 3.0, *Operations*. As such it is herein referred to as

that rationality (war's subordination to reason) and non-rational forces (the play of chance and probability) would eventually restrain the irrational forces (violent emotions such as primordial violence, hatred, and enmity) that could push conflict towards absolute war. Clausewitz could not bring himself to accept man as wholly irrational, thus warfare as he saw it would always be limited.<sup>2</sup>

Unrestricted warfare, on the other hand, "transcends all boundaries and limits" to include the rationality of man.<sup>3</sup> Irrational emotion, grounded in political, religious, economic, or cultural ideologies provides the fuel for those wishing to initiate this brand of warfare. Practitioners of unrestricted warfare view war's subordination to American concepts of reason as an unacceptable disadvantage. This perception subverts Clausewitz' concept of restraining warfare by eliminating the assumed relative mutual rationality of the adversaries.<sup>4</sup> As such, only the physical environment or the rationality of a stronger foe can harness the forces of unrestricted warfare. Left to its own devices, unrestricted warfare, with its insubordination to reason, could lead, at its most extreme, to

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FM 3.0.

<sup>2</sup> (1) Carl von Clausewitz, *On War*, (Edited and translated by Michael Howard and Peter Paret, Princeton Press, Princeton, 1987), 579-581. Clausewitz actually used the term "real" war to describe irrational or "absolute" war constrained by rational and non-rational forces. (2) Edward J. Villacres and Christopher Bassford, "Reclaiming the Clausewitzian Trinity," *Parameters*, (U.S. Army War College, Autumn 1995).

<sup>3</sup> (1) Qiao Liang and Wang Xiangsui. *Unrestricted Warfare*. PLA Literature and Arts Publishing House: Beijing, 1999. (Foreign Broadcast Information Service Translation), 11. Unrestricted warfare also transcends linear time-space sequencing. Liang and Xiangsui believe that unrestricted attacks must be synchronized in time and space to achieve an overwhelming synergistic effect. This is Strategic Art designed to achieve Strategic Paralysis. Where Operational Art synchronizes maneuver and fire in time and space to achieve synergistic effects to defeat conventional forces, Strategic Art synchronizes cybernetic, conceptual, and physical attacks by whatever means available to achieve synergistic effects to overwhelm, shock, and paralyze the psych of the entire enemy nation, thus rendering the enemy strategically incapable of reaction (Strategic Paralysis). (2) See John A. Warden, III, "The Enemy as a System." *Airpower Journal*. (Vol. IX, No. 1, Air University Press, Maxwell AFB, Alabama) and Robert A. Pape, *Bombing to Win*, (Cornell University Press, Ithaca and London, 1996) for detailed discussions concerning Strategic Paralysis.

<sup>4</sup> Relative mutual rationality is rationality that is both self-reflecting and perceptually similar. For instance, two adversaries with the same cultural and/or religious background are likely to have self-reflecting rationality. Relative rationality requires the same concepts of force application and restraint. When a belligerent resorts to force, their rationality for doing so may seem completely irrational to their adversary, but may be undertaken with complete rationality in the mind of the one applying the force. Thus, it is possible for all belligerents in a conflict to be acting with rationality in their own minds, yet acting irrationally in the minds of their adversary. For instance, Hitler's declaration of war against the US may seem wholly irrational in light of his situation at the time, but to him it was the only rational thing to do. Additionally, Clausewitz' assumption of mutual rationality embodies a mutually reasoned threshold of destruction of which no belligerents will cross. Finally, a cognitive dissonance may occur when one belligerent understands the rationality of an opponent's irrationality, but refuses to accept it as legitimate.

the annihilation of the human race. Hitler, fighting on the side of irrationality, approached unrestricted warfare, but was limited by the technologies available to him. Truman, fighting on the side of rationality, came closer to the realm of unrestricted warfare when he tossed the world into the chaos of thermo-nuclear engagement. Fortunately, he broached unrestricted warfare in an effort to contain it. Like fighting fire with fire. As intended, the devastation he wrought brought mankind back to its senses. Since then, governments have established numerous conventions to maintain rationality and limit chaos in the conduct of war.<sup>5</sup> Although the past fifty years are stained with the blood of many battles, with few exceptions, all were fought in a rationally restricted environment by rationally thinking adversaries.<sup>6</sup>

This rationality was possible because the militaries of the Cold War adversaries reflected similar organizational designs, doctrinal concepts, training methods, equipment designs and capabilities, martial values, and rules of engagement. This “self-reflection”<sup>7</sup> created a symmetric environment whereby the opposing militaries primarily utilized similar means in typical ways. Although each side continually sought to create an asymmetric environment by developing dissimilar means and applying them in a typical fashion or by applying similar means in an atypical manner, they choreographed their moves within the confines of the rationally restricted environment they mutually created. Each asymmetric advantage quickly decayed as the disadvantaged adversary inevitably

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<sup>5</sup> These conventions are in the form of various laws, treaties, resolutions, regulations and traditions relating to the conduct of modern war. Examples are the Geneva Conventions, the Haig Convention, UN Resolutions, and the US Army’s Law of Land Warfare.

<sup>6</sup> The recent conflicts in Somalia, the Balkans and the Stans, as well as attacks by international insurgents like Osama bin Laden provide the exceptions. These wars provide an indication of the transcendence of boundaries and limits, and the brutality and unpredictability of unrestricted warfare on a relatively small scale. As with WWII, these wars fell short of unrestricted warfare due to limiting technologies and/or at least one rational belligerent with enough strength to contain the irrational belligerent.

<sup>7</sup> James J. Schneider, “Vulcan’s Anvil: The American Civil War and the Emergence of Operational Art,” *Theoretical Paper No. 4*, (US Army Command and General Staff College, School of Advanced Military Studies, 16 June 1991), 66. Dr. Schneider uses the term “self-reflection” to describe an “operationally minded” enemy that is similarly “trained, armed, equipped, structured, and commanded.”

adapted to their counterpart's dissimilarity.<sup>8</sup> This cordial ebb and flow of symmetry and asymmetry lasted nearly 50 years. It vanished with the end of the Cold War, and with it went the rationality made possible by self-reflected adversaries with their similar means applied in typical ways.

In the aftermath of the Cold War, the United States now stands without peer in the realm of conventional militaries. US dominance in conventional military affairs creates an extreme asymmetric environment in which emerging adversaries perceive their only recourse to be an irrational form of unrestricted warfare where they will use dissimilar means applied in atypical ways. Transcending all boundaries and limits of traditional American paradigms of rational behavior, practitioners of this extreme form of warfare counter conventional military superiority by attacking the legal, moral, political, economic, technological, and cybernetic weaknesses of the enemy within but primarily without the military establishment.<sup>9</sup> By violently attacking, in patternless operations, civilian computer networks, banking systems, ecological systems, political and legal structures, cultural systems, and moral ideals, practitioners of unrestricted warfare render conventional militaries defenseless; particularly in the US where these points of attack are clearly outside the military realm of cognitive responsibility.<sup>10</sup> The exponential advantages of such attacks are unmatched in history because of the unprecedented proliferation of personal computers, internet access, and high tech training during the 1990's.

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<sup>8</sup> Student Text 3-0, 4-31.

<sup>9</sup> James J. Schneider, "The Theory of Operational Art," *Theoretical Paper No. 3 (Draft – 2<sup>nd</sup> Revision)*, (US Army Command and General Staff College, School of Advanced Military Studies, 1 March 1988), 6. Dr. Schneider describes the "cybernetic factor" elements as organization, command, control, communications, and information which all contribute to unit cohesion.

<sup>10</sup> Qiao Liang and Wang Xiangsui, 31-48.

Unrestricted warfare represents the conceptual “high end” of asymmetry where exploiting vulnerabilities outside of conventional military paradigms does not necessarily result in the death and destruction of Clausewitz’ absolute war.<sup>11</sup> Rather it seeks to create such shocking and overwhelming effects so as to render an opposing force cognitively incapable of reaction. If an attacked enemy does muster the will to react, the unrestricted warfare practitioner will not hesitate to irrationally escalate warfare beyond the realm of controllable chaos.

The practitioners of unrestricted warfare enable it to transcend all boundaries and limits by their disenfranchised attitude. Not having participated in the formulation of restricted warfare’s various conventions, they do not feel obligated to follow any of the conventional rules or moral codes. They do not ascribe to the sanctity of life, let alone any tenants of law. Ralph Peters identifies them as “The New Warrior Class.” In an article in the U.S. Army War College Journal, *Parameters*, he vividly foretells of the challenges facing the US when dealing with this new class of warrior:

...(New Warrior Class) warriors do not play by our rules, do not respect treaties, and do not obey orders they do not like...America will face warriors who have acquired a taste for killing, who do not behave rationally according to our definition of rationality, who are capable of atrocities that challenge the descriptive powers of language, and who will sacrifice their own kind in order to survive...We will face opponents for whom treachery is routine, and they will not be impressed by our tepid show of force with restrictive rules of engagement.<sup>12</sup>

Practitioners of unrestricted warfare will use whatever means – no matter how cognitively reprehensible to American democratic morals or contrary to the rule of law – to accomplish their objectives. The challenge facing the US is how to psychologically prepare for and actively counter this extreme asymmetric threat.

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<sup>11</sup> Paul R. Herman, Jr. “Asymmetric Warfare: Sizing the Threat.” *Low Intensity Conflict & Law Enforcement*, (Frank Cass, London, Vol 6, No 1, 1997), 177.

<sup>12</sup> Ralph Peters, “The New Warrior Class,” *Parameters*, (Vol XXIV, No. 2, Summer 1994), 16.

One of the most fundamental and possibly the most expedient way to counter this threat is through proactive military leadership targeting aimed at physically destroying the leadership of the New Warrior Class. Unfortunately, leadership targeting is associated with certain negative paradigms that the US public and civilian as well as military leadership may not find easy to break. Although the US may have an asymmetric advantage by possessing the technological and physical means necessary to implement a proactive military leadership targeting policy; current legal, moral, and political conventions detract from its exploitation.

These conventions place the US at a distinct disadvantage by severely restricting theater and operational level leadership targeting rules of engagement. This self-imposed disadvantage has the US military at a “point of diminishing returns on business as usual” with the only recourse being to “investigate possible departures” from existing conventions in order to alter the rules of engagement in favor of the US.<sup>13</sup> This argument is underscored by a mandate found in the US Army’s draft version of Field Manual 3.0, *Operations*, which reads, “Countering asymmetric attacks requires the disadvantaged side to alter (its) rules of engagement....”<sup>14</sup> Refusing to anticipate and undertake action to change the rules of engagement concerning leadership targeting will only serve to complicate offensive operations, thus putting American lives at risk by preventing the National Security Council, the Department of Defense, and other Federal Agencies from “frankly” discussing operational and theater strategic leadership targeting options.<sup>15</sup> It is in this framework that this thesis will explore the legal, moral, and political considerations of military leadership targeting in order to answer the question: Is the

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<sup>13</sup> Herman, 182.

<sup>14</sup> Student Text 3-0, 4-31.

<sup>15</sup> Edward G. Shirley, “The Etiquette of Killing bin Laden.” *Wall Street Journal*, (27 August 1998, Eastern Edition), A14. Shirley uses a similar argument for justifying a proactive targeting policy towards Osama bin Laden.

physical destruction element of command and control warfare (C<sub>2</sub>W) an admissible shaping operation at either the theater strategic or operational levels of war?

The physical destruction element of C<sub>2</sub>W receives little attention in official military doctrine. Joint military doctrine introduces the concept as the targeting of command and control (C<sub>2</sub>) nodes in which target planners may use the element of physical destruction against command portions of the adversary's C<sub>2</sub> system. This vagueness does not stipulate at what level of warfare nor where along the spectrum of conflict military leadership targeting ends and the illegal activity of assassination begins. Nor does it provide guidance for leadership target planning during military operations other than war vice planning for the same during major theater wars. Army doctrine is no less vague as it derives in part from the joint doctrine. This ambiguity, coupled with popular media's tendency to associate military leadership targeting with assassination, results in an understandable apprehension on the part of military commanders to exploit the asymmetric advantage the physical destruction element of C<sub>2</sub>W potentially offers.

The current trend in most academic and popular media literature concerning the physical destruction of leadership is that leadership targeting is paramount to assassination, thus it is legally, morally, and politically unacceptable. This body of literature contends that the U.S. should continue its current three pronged policy of making no concessions with leaders of "criminal" organizations or states; using political, economic, and military pressure on states which practice or otherwise sponsor "illegal" warfare; and bringing to justice leaders who use "illegal" means and ways to further their interests vice judiciously targeting them for destruction. This literature contends that a legitimate government, by engaging in leadership targeting, unacceptably lowers itself to illegal terrorist standards, thus condoning the use of illegal or immoral conduct – this is

commonly called the “moral high-ground” argument. The argument continues that if a government engages in leadership targeting, it opens itself to justifiable unrestricted retaliation as well as international condemnation. These arguments are based on the prevailing assumptions that leadership targeting is nothing more than assassination, and as such is simply illegal, conflicts with Democratic values, and is contrary to the international norm.

A second, albeit small, counter trend is emerging with a growing body of literature that suggests that the current trend of not accepting leadership targeting is incorrect. This counter trend is gaining momentum as scholars (secular and religious) and government professionals (military, civil servant, and politicians) begin to understand the lawless and chaotic realities of unrestricted warfare. The tenants of this counter trend are that operational and theater level leadership targeting, as an element of command and control warfare, are not against international law and that the US has, without international legal justification, unilaterally decided not to pursue the physical destruction of enemy leaders to its fullest potential. These tenants are supported by arguments that the United Nations will support destroying judiciously selected leadership targets; that leadership targeting is more efficient than armed conflict (or even an embargo) in that it produces far fewer casualties and quickly removes the center of gravity of a rogue organization; that the physical destruction of an enemy leader would target the person directly responsible for any acts which threaten US citizens or interests instead of punishing the people of the person’s country or organization; and, finally, that the United States has a moral obligation to protect its citizens by eliminating leaders whose unrestricted activities threaten the lives and vital interests of US citizens.

This monograph uses historical, comparative, and qualitative description and analysis to logically synthesize and interpret the military, academic, and popular media literature gathered from both primary and secondary sources. Chapter one presents the problem and briefly explains the organization of the monograph. Chapter two explores the US ban on assassination and its impact on military action, which provides a basis for distinguishing between the illegality of assassination and the legality of military leadership targeting. With the legality of leadership targeting established, chapter three examines the moral implications of implementing a proactive leadership targeting policy. Morality considered, chapter four delves into the political considerations of targeting leaders for physical destruction as part of command and control warfare operations. Finally, chapter five analyzes the facts and findings against selected evaluation criteria so as to provide a basis for conclusions and recommendations.

## CHAPTER TWO

### LEGAL ISSUES

The legality of military leadership targeting as an aspect of the physical destruction element of command and control warfare is often challenged under the laws governing the illegality of assassination. This association of military leadership targeting with assassination precludes a rational examination of leadership targeting on its own merits. In order to fully examine its legality, military leadership targeting must be disassociated from the clearly illegal activity of assassination.<sup>16</sup> Achieving this can only be accomplished by exploring the circumstances that originally fostered the relationship; the genesis of which is found in a vague US policy that bans federal government employees from plotting or participating in the assassination of a foreign leader. This restrictive policy is officially articulated in the form of a Presidential Executive Order (EO) that many legal commentators believe carries the weight of law and applies to any situation in which a foreign leader is targeted for elimination.<sup>17</sup>

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<sup>16</sup> (1) James F. Childress, "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *War, Morality, and the Military Profession*, (Ed. Malham M. Wakin. Westview Press: Boulder and London, 1986), 256-276. Childress makes a distinction between the *Prima facie* character of killing versus the absolute character of murder. Do not kill is *prima facie* (i.e. can kill in self defense). Do not commit murder is absolute (i.e. no murder is justifiable). This leaves open the question of which killings are to be counted as murder, but clearly any murder itself is illegal. (2) More than twenty definitions of assassination were found in researching this topic. Most definitions use "murder" or "extralegal killing" to describe assassination. Also, "political motive" and some sort of "treachery" or "trickery" is involved. Granted, military leadership targeting is killing, but when judiciously executed (that is in self-defense, as an act of humanitarian intervention, or in the conduct of an otherwise just war; without political motive; and absent treachery) under international and domestic law it is not murder, as demonstrated later in this chapter. (3) Patricia Zengel, "Assassination and the Law of Armed Conflict." *Military Law Review*, (134, Fall 1991) 146. Zengel points out "what is not murder cannot be assassination."

<sup>17</sup> (1) Boyd M. Johnson III. "Executive Order 12,333: The Permissibility of an American Assassination of a Foreign Leader," *Cornell International Law Journal*, (24, Spring 1992), 401-435. Citing both legal scholars and case law, Johnson demonstrates that although not all Presidential Executive Orders (EO) have withstood judicial review, the EO banning assassination would "likely survive" a constitutional challenge given the broad deference to executive orders by congress, in conjunction with the various constitutional provisions and statutory authorities of the President. (2) As will be demonstrated, many legal and military scholars believe that the assassination ban applies to military operations, although some of those same scholars feel assassination is justifiable in "extreme cases." They do not see a separation between legitimate military leadership targeting and assassination. They merely view it as opting for a lesser evil.

President Ford signed the original assassination ban in 1976 after a US Senate investigating committee, commonly known as the Church Committee in honor of its chairman, Senator Frank Church, released its findings indicting the US intelligence community for helping to both plot and participate in illegal assassination attempts (some of which were successful) on the leaders of at least five countries.<sup>18</sup> The Committee's findings – released in the aftermath of the domestic violence of the 1960's, the US involvement in Vietnam, and the presidential intrigue associated with Watergate – horrified and dismayed the American public, solidifying their mounting distrust of the Federal Government.<sup>19</sup> Even though America was embroiled in the Cold War, "The American public no longer perceived the Communist menace as the dominant threat. The greatest threat was (an) internal...powerful, unchecked and abusive central government."<sup>20</sup>

Ambiguity surrounding who authorized US participation in the assassination plots fueled the public's suspicion of the Federal Government. The Senate Committee uncovered a labyrinth of intrigue that provided everyone involved in the assassination plots protection under the guise of "plausible denial."<sup>21</sup> Plausible denial left the door open

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<sup>18</sup> Frank Church, Chairman, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. *Alleged Assassination Plots Involving Foreign Leaders, An Interim Report*, (U.S. Government Printing Office: Washington, 1975). These countries were Cuba, Vietnam, Chile, the Dominican Republic, and the Congo. Herein this report is referred to as the Church Committee, Senate Committee, or the Committee.

<sup>19</sup> (1) Church, 257. Not only did the Federal Government engage in illegal assassination activities, the government officials involved also admitted to using underworld criminals in their efforts. This also added to the public's dismay. (2) Tim Weiner, "Rethinking the Ban on Political Assassination," *New York Times*, (Late Edition, 30 August 1998), 3A.

<sup>20</sup> Herbert, Roger G. *Bullets With Names: The Deadly Dilemma*, (Masters Thesis, Naval Post Graduate School, ADA 256210, June 1992), 53.

<sup>21</sup> Church Committee, 1-11. The Committee reported that plausible denial encouraged the use of circumlocution and euphemisms when dealing with the assassination plots. It had the result that communications between the CIA and high Administration officials were often convoluted and imprecise. This provided protection for all concerned. The Committee found that the system of executive command and control was so ambiguous that it was difficult to be certain at what levels the assassination activity was known and authorized. The situation created the disturbing prospect that Government officials might have undertaken the assassination plots without an explicit authorization from the President. Additionally, the Committee found that there might have been a successful plausible denial in which undeterminable Presidential authorization was actually issued. The Committee reported that this practice was an extension of the accepted doctrine of plausible deniability whereby the CIA concealed its covert operations from the world and performed them in such a way that if discovered, the role of the United States could be plausibly denied. The committee concluded that extending the doctrine to the internal decision-making process of the Federal Government was "absurd."

for low and mid level officials to both act without Presidential authority in planning and executing the assassinations and to protect high-level officials from blame if things should go wrong or be exposed. In an effort to regain control of the Federal Government by precluding the unilateral actions of individuals or agencies to engage in assassination, as well as to reestablish public trust, President Ford issued Executive Order 11905.<sup>22</sup> The order, forbidding any employee of the United States Government from engaging in “political” assassinations, was an obvious reaction to the public’s distrust of the political intrigue, fostered by years of double-speak, duplicity, outright lying, and involvement in illegal activities that characterized the Federal Government at the time.<sup>23</sup>

Presidents Carter and Reagan, whose administrations also felt the pressures of public skepticism, continued this ban on assassination by issuing subsequent Executive Orders using the same wording as Ford’s original order except for the unexplained removal of the word “political.”<sup>24</sup> The final and current standing order, Executive Order 12333, issued by President Reagan reads:

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this order.<sup>25</sup>

Removing the word “political” from the executive order provided, intentionally or not, sufficient ambiguity so as to expand the scope of the ban to allow questioning of the military’s use of leadership targeting as a component of the physical destruction element

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<sup>22</sup> (1) Hugh R. Overholt, “Draft Memorandum of Law: Assassination.” Prepared by Hays W. Parks. Department of the Army, Office of the Judge Advocate General. Undated. (2) Executive Order No. 11905, 3 C.F.R. 90 (1976).

<sup>23</sup> (1) Tim Weiner, “Rethinking the Ban on Political Assassination,” *New York Times*, (Late Edition, 30 August 1998), 3A. (2) Zengel, 145.

<sup>24</sup> Carter’s administration was under scrutiny for the failing economy as well as the Iran hostage crisis. Reagan’s administration felt pressure to reestablish the Federal Government’s credibility in the wake of the failed Iran hostage rescue engineered by the previous administration.

<sup>25</sup> Executive Order No. 12,333, 3 C.F.R. 200 (1981).

of command and control warfare.<sup>26</sup> During the years following the removal of the word “political” from the EO, debate concerning the ban has primarily focused on its precise implications on military operations.<sup>27</sup> Many commentators argue that without the word “political,” the assassination ban provides a blanket prohibition against targeting any foreign leader for any reason.<sup>28</sup> On the other hand, Patricia Zengel, in a 1991 Military Law Review article that concisely surveys the assassination ban debate from a legal perspective, argues that contemporary interpretation of the ban is “significantly more restrictive” than the legislation proposed in the original Church Committee report. She suggests that the ban should clearly apply to circumstances similar to those that had been the subject of the Church Committee investigation, not as a restriction on military operations.<sup>29</sup>

The Church Committee found that none of the five-targeted leaders actually posed a threat to the US.<sup>30</sup> Although “...there is no doubt that the United States Government opposed the various leaders in question,” the assassination plots were nothing more than *Realpolitik* maneuvers aimed at simply eliminating uncooperative foreign leaders.<sup>31</sup> As such, the committee proposed legislation making assassination illegal during peacetime,

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<sup>26</sup> Jonathan M. Fredman, “Covert Action, Loss of Life, and the Prohibition on Assassination, 1976-96 (U),” *Studies in Intelligence – Unclassified Edition*, (Vol. 1, Center for the Study of Intelligence, Washington, D.C. 1997), 16.

President Carter provided no explanation as to why the word political was dropped from the order. President Reagan did not alter Carter’s wording when he reissued the order. Reagan’s order remains standing.

<sup>27</sup> Most discussion and literature concerning the assassination ban has been generated at three specific periods: the 1986 attack on the residence of Libyan President Muammar Al-Qaddafi, the 1990 attacks aimed at Saddam Huessein during the Gulf War, and the 1998 missile attacks into Afghanistan aimed at eliminating Osama bin Laden.

<sup>28</sup> There are three predominate opinions concerning assassination as it applies to military operations: the belief that assassination is illegal and immoral under any circumstances, the belief that assassination is illegal and immoral but justifiable in extreme situations, and the belief that assassination is illegal and immoral but has nothing to do with legitimate military leadership targeting. For example, Bolcholz and Johnson are of the first opinion; Beres, Brandenburg, Claburn, the Church Committee, Herbert, Keller, Livingston, O’Brian, Ross, Shirley, Stoker, Taylor, and Zengel are of the second opinion; and Parks and Peters are of the third opinion, although, Parks limits his separation to so called “terrorists.” Many commentators argue in favor of the second opinion. Herein lay the root of the problem of restraining open and frank leadership targeting discussions by associating it with and then justifying it in light of the illegal and immoral nature of assassination.

<sup>29</sup> Zengel, 123-155.

<sup>30</sup> Church Committee, 258.

<sup>31</sup> (1) Church Committee, 6. (2) Beres, 305.

but left open the possibility of targeting foreign leaders in countries with whom the United States was in conflict “pursuant to a declaration of war or against which the United States Armed Forces had been introduced into hostilities or situations pursuant to the provision of the War Powers Resolution.”<sup>32</sup> The Committee made it clear that military operations provided for legitimate leadership targeting while the murder of foreign leaders on account of their political views was clearly a criminal offense.<sup>33</sup> It was revulsion at this latter sort of expedient illegal leadership targeting that prompted the implementation of an assassination ban, not the legitimate destruction of military targets aimed at deterring or terminating a war. As such, the illegal activity of political assassination must set the agenda for determining how the ban is interpreted and applied, not legitimate military operations.

Interpreting and applying the ban outside the original context in which it was promulgated unduly ties the hands of the National Command Authority (NCA) to take prudent action in the face of threats to US citizens and vital national interests in either preventing or terminating conflict throughout the full spectrum of military operations.<sup>34</sup> In particular, associating legitimate military leadership targeting with assassination requires justifying the former as the lesser evil of two illegal activities.<sup>35</sup> It is this type of

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<sup>32</sup> Church Committee, 283-284.

<sup>33</sup> Ibid, 284.

<sup>34</sup> Student Text 3-0, 1-14 & 1-15. The Army’s future doctrine manual identifies “Full Spectrum Operations” as Military Operations Other Than War and War. Within this range are the goals of promoting peace, deterring war and resolving conflict, and fighting and winning war. These three goals roughly relate to the activities of peacetime military engagement, smaller-scale contingency, and major theater of war. See Appendix A.

<sup>35</sup> (1) Louis Beres, “Assassination and the Law: A Policy Memorandum,” *Studies in Conflict and Terrorism*, (18 1995), 299-315. Beres presents a convincing argument on the “ironclad” illegality of assassination then unexpectedly offers arguments using the principle of *jus cogens* or “peremptory” norms of international law to justify it as “authentically law enforcing.” He concludes that “it has surely been a greater violation of international law to leave Saddam’s rule intact than it would have been to assassinate him.” (301); (2) Bert Brandenburg, “The Legality of Assassination as an Aspect of Foreign Policy,” *Virginia Journal of International Law*, (27 (Spring 1987), 655-697. Brandenburg also presents a solid argument that conventions, treaties, state extradition statutes, and general principles of international law prohibit the use of assassination. He even proposes that the US should enact legislation preventing the use of assassination in that the EO is insufficient to ensure it is not used. That said, he then argues that even if illegal, it would be permissible to use assassination to preempt terrorism or in response to “massive” human rights violations. (3) Zengel, 146. In reference to the “lesser evil” arguments, Zengel writes, “Despite the sincerity with

Machiavellian double-talk, with its inherent double standard, that prevents a rational discussion of the issue so as to ensure the physical destruction element of command and control warfare receives adequate attention when planning military operations. The result is often botched leadership targeting attempts such as the 1986 attempt on Qadaffi, the 1991 attempt on Hussein, and the 1998 attempt on bin Laden. Commanders and planners who are required to cloak leadership targeting in some collateral damage “mishap” or “political duplicity” will not have the proper focus for ensuring the leader being contemplated for elimination is adequately analyzed and, if appropriate, properly targeted for elimination. Disassociating legitimate military leadership targeting from assassination will preclude the need for circumlocution and duplicity, allowing commanders the freedom of open and frank discussions when planning the elimination of decisive leadership targets which, in turn, will help reduce the risk of mission failure.

During such discussions, military leaders should not have to engender a personal or collective legal/moral debate or otherwise waste energy trying to justify an illegal activity; rather they should expend their energy on judiciously selecting targets and planning for their synergistic destruction in the overall scope of whatever military operation they are participating. These targets should undoubtedly include specific enemy leadership elements if those elements exercise major command and control functions and their physical destruction would significantly enhance deterring or terminating a war or other humanitarian crisis.<sup>36</sup> Herein lay the clear distinction between assassination and legitimate military leadership targeting. Where assassination is the deliberate murder of an individual for purely political purposes within the confines of conflict or peace;

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which these views are held, they cannot obscure the fact that any definition of assassination must incorporate the idea of an illegal killing....” From this perspective, there is no justification for the use of assassination.

<sup>36</sup> (1) Neil Livingston, “Bringing Death to Tyrants,” *Soldier of Fortune*, (October, 1991), 81-83. (2) Richard N. Haas, “Military Force: A User’s Guide,” *Foreign Policy* (Vol 96, Fall 1994), 21-37.

military leadership targeting is the deliberate killing of an individual for purely military purposes within the confines of conflict.<sup>37</sup>

When disassociated from assassination, several conventions provide legal justification for military leadership targeting across the entire spectrum of conflict. International validation is found in Article 51 of the United Nations Charter, which provides for the use of force for “self-protection” against hostile force.<sup>38</sup> The US views this self-protection as action against force, action against a hostile or aggressive act, as preemptive self-defense action against a hostile or aggressive act, as action against a continuing threat, and as action to prevent a humanitarian crisis that threatens US interests.<sup>39</sup> When conducting such self-protection actions (whether preemptive or while in conflict as a result of self-defense or humanitarian intervention), the Geneva Convention of 1907 clearly prohibits assassination, proscription, or outlawry of an enemy or enemy civilians.<sup>40</sup> This Convention does not, however; construe these prohibitions as precluding necessary “attacks on individual soldiers or officers whether in the zone of hostilities, occupied territory, or elsewhere”<sup>41</sup> as long as the attacks are not conducted in a treacherous

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<sup>37</sup> (1) Havens, 4. (2) O’Brian, 98. (3) Student Text 3.0, 1-14 & 1-15. This manual defines the spectrum of conflict. See Appendices A and B.

<sup>38</sup> (1) Manning J. Bolchoz, “Center of Gravity: Justification for Assassination?” *Strategy Research Project*, (U.S. Army War College: Carlisle Barracks, PA, June 1999). (2) Boyd Johnson, 403. (3) Sean D. Murphy, “Contemporary Practice of the United States Relating to International Law,” *The American Journal of International Law*, (93:1, January 1999), 161-194. (4) Richard N. Haas, “Military Force: A User’s Guide.” *Foreign Policy*, (96, Fall 1994), 21-37. A hostile force can be either conventional or “terrorist” or both.

<sup>39</sup> (1) Hugh R. Overholt, “Draft Memorandum of Law: Assassination,” (Prepared by Hays W. Parks. Department of the Army, Office of the Judge Advocate General, Undated). (2) Hays W. Parks, “Memorandum of Law: Executive Order 12333 and Assassination,” *The Army Lawyer*, (December. 1989, The Judge Advocate General’s School, U.S. Army, Charlottesville, VA, 1989), 4-9. Both Overholt and Parks give the opinion that the use of military leadership targeting is legal for use against both conventional and “terrorist” targets. Additionally, they opine that the use of military strikes against enemy leaders does not constitute assassination. Rather, it is the application of military force against a legal target.

<sup>40</sup> Two other international conventions – protection of representative people and aggressor actions across border – provide international prohibitions against assassination and unprovoked attack respectively, but the international right of self-protection is *quid-pro-quo*; the leader must comply with all other conventions and norms in order to receive the benefits of the others. As such, it is assumed that an enemy leader has violated other norms and conventions when considering the legal, legitimate use of military leadership targeting, thus has forfeited any rights as a protected person or protection against aggressive actions.

<sup>41</sup> Hague Convention No. IV of 18 October 1907, *Respecting the Laws and Customs of War on Land* (36 Stat. 2277; Treaty Series 539), Appendix thereto, embodying the *Regulations Respecting the Laws and Customs of War on Land*

manner.<sup>42</sup> Additionally, although international conventions and norms regarding protection of representative leaders and other protected persons exist, they create an implicit *quid-pro-quo*. In order for a nation's leader to claim protection under these conventions, the leader must not violate other international conventions and norms prohibiting aggression or human rights violations and must generally comply with all other norms of international behavior. If a leader does violate these other conventions or norms, that leader divests him or her self of the legitimate right to claim the benefits or norms of protection under international law.<sup>43</sup> A nation has the self-protection right to take action to defend itself against such international criminals, including the right to make the specific person who perpetrated the crime culpable for their action. In some situations, such as imminent attack, continuing threat, or continuing human rights violations, the only recourse may be to eliminate the offending leader. If such self-protection action is taken with military means, it is not assassination under international conventions and norms; rather it is clearly a direct military action of self-defense.<sup>44</sup>

The US Congress has given further legal support to conducting self-protection actions under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996.

Warren Berger cited this specific act while defending, as the National Security Advisor to former President Clinton, that administration's missile attacks into Afghanistan aimed at

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(36 Stat. 2295; Treaty Series 539), cited in Field Manual 27-10 (Change 1), *The Law of Land Warfare*, (Washington D.C.: Headquarters, Department of the Army, 15 July 1976), 31. Article 3 (protected persons) and Article 43 (armed forces) of the 1907 Geneva Convention as well as international norm ensure the protection of both foreign dignitaries and the civilian population. This applies equally well to a head of state or government of a sovereign nation as well as to an international insurgent or "terrorist." The question of civilian status during conflict is discussed in the next section of this chapter.

<sup>42</sup> Zengel, 137. Zengel points out that "treachery" requires a betrayal of an obligation, e.g. inviting an enemy leader to discuss terms of peace and then murdering the leader either enroute to, at the specified location, or while returning to his or her place of sanctuary would constitute a betrayal. In this example, the obligation betrayed would be the assumed safety of leader based on the invitation. On the other hand, a military ambush is not "treachery" in this sense. If a unit or individual is on patrol in the zone of combat, no obligation of safe passage can be assumed, thus it can not be betrayed.

<sup>43</sup> (1) Beres. (2) O'Brian. (3) Overholt. (4) Parks. (5) Zengel. All of these authors discuss the *quid-pro-quo* nature of International Law.

eliminating Osama bin Laden.<sup>45</sup> This act contains a congressional finding that permits the President to “use all necessary means to disrupt, dismantle, and destroy” the infrastructures used by international terrorists threatening US citizens.<sup>46</sup>

From a military perspective, these self-defense actions are conducted under the doctrinal authority of Information Warfare Operations. Although vague, the doctrine provides further justification for conducting leadership targeting disassociated from the illegal stigma of assassination. Under the physical destruction element of Command and Control Warfare (C<sub>2</sub>W), military commanders are given the authority to use lethal means against the “command” portions of the adversary’s command and control system.<sup>47</sup> The Army’s Field Manual 100-6, *Information Operations*, explains that “(t)he destruction of a hostile (command) target means that adversary (command) capabilities are degraded for a period of time, or if necessary, permanently shut down. Physical destruction is used only after a full, comparative assessment...of the trade-offs between preserving the target versus its destruction.”<sup>48</sup>

If there is any confusion as to what a “command” target may be, it is made poignantly clear by the manual’s “historical perspective” of the targeting of Admiral Isoroku Yamamoto, Commander-in-Chief of Japan’s WWII Navy. The downing of Yamamoto’s airplane over the Pacific is provided as an example of the effectiveness of the physical destruction element of C<sub>2</sub>W in the Information Warfare manual.<sup>49</sup> This example provides

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<sup>44</sup> (1) Overholt, p 2. (2) Parks, 5.

<sup>45</sup> Murphy, 164.

<sup>46</sup> Ibid, 165.

<sup>47</sup> Joint Publication 3-13.1, *Joint Doctrine for Command and Control Warfare (C<sub>2</sub>W)*, (Washington D.C.: Headquarters, Joint Staff (J7), 7 February 1996), I-5 & II-9. “Against Command. Seeking to destroy the adversary’s command consists of trying to ‘degrade’ the adversary commander and immediate staff by attacking the staff headquarters and associated communications.” II-10.

<sup>48</sup> (1) Field Manual 100-6, *Information Operations*, (Washington D.C.: Headquarters, Department of the Army, 27 August 1996), 3-5. (2) Student Text 3-0, 11-15 through 11-17. Information operations (IO) are described as shaping operations that “create and preserve opportunities for decisive operations.” One element of IO is physical destruction. This manual generally reflects the tenants of IO found in both JP 3-13.1 and FM 100-6.

<sup>49</sup> Field Manual 100-6, 3-5.

an indication as to what leadership targets are permitted when conducting physical destruction operations as an element of a C<sub>2</sub>W operation. Additional indications as to permissible targets are found in the Army's Technical Circular 31-20, *Special Operations Training and Employment*. This manual instructs Army snipers, as a mission essential task, to include military and political officers on their list of priority targets to destroy so as to limit the enemy's ability to continue fighting.<sup>50</sup> Unfortunately the manual does not provide guidance as to who selects and approves these targets, or at what level of war a sniper may freely engage a particular target.

Even if disassociated from the illegal activity of assassination and clearly within the legal limits of the various conventions concerning war, abuse of military leadership targeting as a component of the physical destruction element of C<sub>2</sub>W could easily occur if guidelines are not set forth to firmly establish when leadership targeting is lawful and to distinguish between permissible and prohibited leadership targets. A number of situations arise in which questions surface as to the legitimacy of the environment in which a leader is targeted and the legitimacy of a leadership target itself. Thorough analysis must confirm an environment of conflict as well as the military legitimacy of a leadership target before a leadership target is approved for destruction.

The environment in which leadership targeting may occur can be represented on a continuum from total peace to total war.<sup>51</sup> Movement along the continuum from peace to war increases the legitimacy of using military leadership targeting. Legitimacy for military leadership targeting is established once an environment of conflict is reached along the continuum. At that point, it is imperative to establish the military legitimacy of

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<sup>50</sup> Technical Circular 31-32, *Special Operations Sniper Training and Employment*, (US Army JFK Special Warfare Center and School, Fort Bragg, NC, 29 September 1997), A-2.

<sup>51</sup> See Appendix A.

the target being considered. Legitimate military leadership targets are determined based on the amount of support a given leader is providing to the belligerent force. This support may be direct, such as commanding military units or indirect such as providing administrative support from outside the military. The actual level of war at which a particular legitimate target is operating is irrelevant to the legality of physically destroying it.<sup>52</sup> Clearly a commander in uniform at the tactical level during a major theater of war is a legitimate target. Not clear, though, is if a civilian leader exercising national strategic level administrative control of the military forces during a peacetime military engagement is a legitimate target. Between these two extremes falls a multitude of combinations of environment of conflict and leader status making military leadership targeting an extremely sensitive prospect from a legal point of view. Establishing guidelines for the use of military leadership targeting will help ensure abuses of its use are minimized.

First and foremost, the legality of military leadership targeting rests on the fact that conflict must exist as set forth by the previously discussed international conventions. That is, leadership targeting conducted without the threat of imminent aggression or a humanitarian disaster, or in the absence of a military conflict, is nothing more than assassination for purely political purposes. Activity of this nature is exactly the kind exposed by the Church committee. It is simply illegal and not acceptable.

However, during Military Operations Other Than War (MOOTW), in the overlap of peacetime military engagement and smaller-scale contingencies (also known as low intensity conflict) as depicted in emerging Army doctrine and, for that matter, in actual contemporary operations such as those conducted in Somalia and the Balkans or against

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<sup>52</sup> (1) The level of war is irrelevant from a legal perspective if a target is deemed otherwise legal. On-the-other-hand, the level of war has considerable relevance in terms of the political considerations of military leadership targeting. These considerations are discussed in chapter four. (2) Student Text 3-0, 2-2 & 2-3. The manual identifies the three levels of war: tactical, operational, and strategic.

“terrorists” like bin Laden, the existence or absence of conflict is difficult to discern.<sup>53</sup>

Situations of this nature require a case-by-case expert analysis to discern between the actual and perceived threat. If it is determined that the threat is within the guidelines of the aforementioned conventions concerning the use of force, then engaging in an active leadership targeting operation would be undeniably permissible.

Moving up the range of Military Operations from MOOTW to War eases the difficulty of legitimizing an active leadership targeting campaign in relation to the existence of conflict. Certainly the shooting down of Yamamoto’s airplane in WWII was legal from a conflict existence perspective. The target’s destruction occurred during a major theater war in which the target was a member of a belligerent nation against which US forces were employed. As such, the ambush of his airplane was no different than any other legitimate military operation being conducted at the time. Yamamoto was simply a high-payoff target in the environment of a major theater war.<sup>54</sup>

Having an environment of conflict firmly established, the next criterion is establishing the military legitimacy of the target. Clearly, the deliberate targeting of civilians and protected persons is a violation of the law of land warfare.<sup>55</sup> Unfortunately, difficulty concerning civilians arises when a civilian supports belligerent military operations through the execution of their civilian duties, or when a civilian exercises command and control over belligerent military forces. Michael Walzer, in his book *Just and Unjust Wars* argues

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<sup>53</sup> Student Text 3-0, Part One: The Environment of Operations, 1-1 through 3-20. The overlap of peaceful military engagement and smaller scale contingencies is often referred to as Low Intensity Conflict or the acronym LIC. This term does not receive recognition in Student Text 3-0. A full explanation of this term is beyond the scope of this thesis, but mention of it is important in that outside Army doctrine manuals it receives common usage, even within the Army itself. See Appendix A.

<sup>54</sup> Field Manual 101-5-1, *Operational Terms and Graphics*, (Washington D.C.: Headquarters, Department of the Army, 30 September 1997), 1-77. A high-payoff target is defined as, “A target whose loss to the threat will contribute to the success of the friendly course of action.”

<sup>55</sup> Article 3 (protected persons) and Article 43 (armed forces) of the 1907 Geneva Convention as well as international norm ensure the protection of both foreign dignitaries and the civilian population.

that both categories are legitimate military targets.<sup>56</sup> Undoubtedly, the latter category, by being in a position to influence the conduct or termination of war is a legitimate target.<sup>57</sup>

It is the former category that calls into serious question the targeting of civilians.

Determining how much support a person is giving to military forces and measuring the finding against an established threshold is required to justify targeting a civilian within the legal limits of international conventions regarding protected persons. This analysis is critical to conducting a legitimate military leadership targeting policy. If the civilian is providing indirect support, i.e. posing for a recruiting poster, then targeting is most likely illegitimate. If, on the other hand, the civilian is the leader of a major military industry or a principal advisor to a military commander, then targeting that civilian is most likely legitimate. Like the situation of perceived versus real threat in MOOTW, situations concerning the validity of a civilian target require a case-by-case expert analysis to discern an appropriate targeting decision.

Conducting expert analysis of the threat environment and the proposed target is essential to ensuring that military leadership targeting remains disassociated from the presidential ban on assassination. The validity of this disassociation rests on the foundation of international and national conventions and norms that support a military leadership targeting policy as a component of the physical destruction element of an overall command and control warfare operation. Such an operation is only valid in the context of the international conventions and norms governing self-protection and prevention of human rights violations. Any other *Realpolitik* motive simply makes leadership targeting the illegal activity of assassination. The findings of the Church Committee clearly demonstrate that such illegal activity is absolutely unacceptable.

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<sup>56</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, (Basic Books, 1977), 146.

Finally, the disassociation of military leadership targeting from assassination provides the operational and theater strategic commander and planners the luxury of focusing their efforts on the details of leadership target planning and execution as a decisive shaping operation vice formulating excuses for doing something illegal.

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<sup>57</sup> Livingston, 81-83.

## CHAPTER THREE

### MORAL ISSUES

As with its legality, the morality of military leadership targeting as an aspect of the physical destruction element of command and control warfare is often challenged under the various precepts governing the morality of assassination. Again, this association of military leadership targeting with the emotionally charged, unacceptable activity of assassination precludes a rational examination of leadership targeting on its own merits. The legal distinction between the two does, however, provide a basis for a moral separation, and thus a balanced independent examination of leadership targeting. Undoubtedly, the illegal activity of assassination carries with it forbidding moral baggage. Military leadership targeting, on the other hand, may in fact provide a morally superior alternative to war or other questionable sanctions when it becomes necessary for the US to protect its citizens and vital interests or prevent humanitarian disasters that threaten its vital interests. Determining this is accomplished by scrutinizing the moral arguments for and against military leadership targeting without the burden of assassination's moral stigma, made possible by the legal disassociation of the two.

The foremost moral argument against military leadership targeting is that it simply violates America's traditional democratic moral precepts of the sanctity of human life, fair play, and honesty.<sup>58</sup> As such, leadership targeting is summarily dismissed as an immoral means of applying force to protect US citizens and vital national interests. Receiving popular support in academic, political, military, and media circles this argument sets the moral agenda for the leadership targeting debate in the US. Those who

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<sup>58</sup> (1) Church, 2. (2) Livingston, 81-83. (3) Bolchoz, 14-15.

support this absolutist argument believe that that leadership targeting, whether as a legal military action or an illegal assassination, is a “brutal, cowardly, and inhumane” act that clearly violates America’s fundamental values.<sup>59</sup> It is, they believe, a tactic used only by “barbarians and terrorists.”<sup>60</sup> Their argument is that the US must maintain a higher standard of conduct and avoid adopting the “tactics of the enemy.”<sup>61</sup> Lieutenant Colonel J. Manning Bolchoz concisely states their so-called “moral high ground” argument in his Army War College Thesis entitled *Center of Gravity: Justification for Assassination*. Arguing against leadership targeting, he writes, “Doing the right thing has always been and will always be important to Americans. It is important...(that US leaders) engage in morally and ethically correct behavior...Moral leadership must be matched by moral action.”<sup>62</sup> Leadership targeting, the moral absolutists believe, is something that no civilized society would engage in, especially the US whose democratic moral precepts of the sanctity of human life, fair play, and honesty are the foundation of its international credibility.

Unfortunately, the moral absolutists, holding center stage in the US debate concerning leadership targeting, do not consider evidence suggesting that a leadership targeting policy may, by denying the US a leadership targeting option, sanction actions, some judge as hypocritical, in violation of the very democratic moral precepts they so vehemently believe they are protecting. For example, when the US must claim that military strikes aimed at killing bin Laden, Hussein, or Gadaffi are something different, they violate the honesty precept by lying to the American people and the international

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<sup>59</sup> Boyd Johnson, 434.

<sup>60</sup> (1) Jeffrey Claburn, “Public Constraints on Assassination as an Instrument of U.S. Foreign Policy,” *Intelligence and Counterintelligence*, (Vol 7, Spring 94), 103. (2) Boyd Johnson, 434.

<sup>61</sup> Church, 285.

<sup>62</sup> J. Manning Bolchoz, “Center of Gravity: Justification for Assassination?” *Strategy Research Project*, (U.S. Army War College: Carlisle Barracks, PA, June 1999), 14-15. Bolchoz, as with most who oppose military leadership

community at large. Additionally, the precept of fair play is violated when the US denies a leadership targeting policy, and then treacherously sends military aircraft to attack a foreign leader in his home.<sup>63</sup> Lastly, what some characterize as the most abhorrent hypocrisy, occurs when the moral absolutists permit war or humanitarian crisis in defense of the sanctity of human life precept. The idea that a criminal leader's life is more sanctimonious than the lives of thousands killed in war is simply absurd.<sup>64</sup> For instance, the March 10, 1945 fire bombing of Tokyo killed over 145,000 innocent people, but the pilots who flew the mission were instructed to avoid the Emperor's palace at all cost.<sup>65</sup> Herein lay what Ralph Peters, in his 1999 book, *Fighting for the Future: Will America Triumph?*, calls the moral absolutists' "ethical disconnect."<sup>66</sup> Central to Peters' argument is the fact that the moral absolutists, with their morally superior outlook, will accept slaughtering the innocent masses but fail "to mortally punish the guiltiest individuals."<sup>67</sup> Like the Emperor with his new clothes and cowardly subjects, the moral absolutists are blind to their ethical disconnect, and the American public with the clout to influence the debate seems afraid to speak out for fear of moral condemnation.

A small collective voice, moral scorn notwithstanding, is emerging to question the ethical disconnect of the moral absolutist majority. Disregarding moral denunciation and cutting directly to the point, this small band of critics question the common disapproval of leadership targeting as distasteful, immoral, and unacceptable, while other more

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targeting, does not distinguish between military leadership targeting and assassination.

<sup>63</sup> (1) Livingston, 81-83. (2) Mark Whitaker, John Walcott, and Anne Underwood, "A New Kind of War." *Newsweek*, (28 April 1986), 16-25. (3) Christopher Dickey, Mark Dennis, Gregory L. Vistica, and Russell Watson. "How to Get Rid of Him," *Newsweek*, (9 March 1998), 31

<sup>64</sup> B.A. Ross, *The Case for Targeting Leadership in War*, (Naval War College, Newport, RI, Feb. 1992), 84.

<sup>65</sup> J.Bowyer Bell, *Assassin! The Theory and Practice of Political Violence*, (St. Martin's Press:New York, 1979) 90.

<sup>66</sup> Ralph Peters, *Fighting for the Future: Will America Triumph?* (Stackpole Books, Mechanicsburg, PA, 1999), 105.

<sup>67</sup> (1) Ibid. Peters points to the situation in Iraq. First the people of Iraq suffered under the great might of the US led coalition that bombed and invaded their country in 1990, then they have had to suffer even more under questionably effective international sanctions while Saddam Hussein suffers none. (2) Livingston, 82. Livingston points out that, "Americans are uncomfortable with assigning someone to kill another human being with a name and face...a bomb (killing thousands) is alright, but a bullet fired at close range is immoral."

violent and destructive activities like war and sanctions are passively accepted.<sup>68</sup> Ralph Peters, the most outspoken of these critics, demands explanation for choosing war and international sanctions where thousands may die over leadership targeting where only the guilty one dies.<sup>69</sup> Piercingly blunt, yet morally accurate, Peters believes the US should, “...move away from associating the leader’s actions with his people...” kill the leader, not the people is his battle cry.<sup>70</sup> Although a bit impulsive, from a utilitarian standpoint Peters is correct. Military leadership targeting may be the “most moral application of force” by saving lives, curtailing suffering, and holding the guilty party responsible for their actions.<sup>71</sup>

In light of this, the United States must break free of its misplaced moral absolutism and accept the reality that leadership targeting should be employed as a preemptive counter-measure, wartime advantage, or war termination catalyst when conditions are right. It must be acknowledged that a morally acceptable military leadership targeting policy cannot be guided by *Realpolitik* motives, but must only be applied as a last resort preemptive counter-measure to massive humanitarian suffering or an aggressive war, or as a means of expediting war termination. Any other application makes it nothing more than the immoral, illegal activity of assassination. As such, and because it is the

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<sup>68</sup> Claburn, 97.

<sup>69</sup> Peters, *Fighting for the Future: Will America Triumph?*, 105-106. Peters is questioning the 1991 invasion of Iraq and the subsequent international sanctions. Although he makes a convincing emotional moral argument, he does not offer a rational set of rules of engagement for implementing a military leadership targeting policy. This impulsive “kill all the guilty bastards” mentality would do more harm than good. Certain legal, moral, political, and practical criteria must be met before a leader is physically destroyed. See chapter five for a proposed set of rules of engagement to ensure these criteria are met to help ensure the success of a leadership targeting policy.

<sup>70</sup> (1) Ibid, 110. (2) Bruce Anderson, “There Are Only Two Ways of Getting Rid of Saddam,” *The Spectator*, (21 November 1998), 8. Anderson argues for the same. “Not only does Saddam deserve to be put to death; it is better that the punishment for his crimes should fall on their perpetrator rather than, as it is now, on most of the Iraqi people, via sanctions...”

<sup>71</sup> (1) Herbert, iii. (2) Livingston, 83. (3) Thomas Nagel, “War and Massacre,” *War, Morality, and the Military Profession*, (Ed. Malham M. Wakin. Westview Press: Boulder and London, 1986), 297-316. Nagel provides a solid argument favoring utilitarian considerations when faced with “preventing a great evil.”

application of military force, military leadership targeting must follow the same moral tenants of *jus ad bello* or Just Conduct in War.<sup>72</sup>

The tenants of Just Conduct in War, proportionality and discrimination, clearly support an aggressive military leadership targeting policy while underscoring the democratic moral precept of the sanctity of human life central to the moral absolutist argument. Proportionality requires that the “response to aggression must not exceed the nature of the aggression” and discrimination requires that responses to aggression “must be directed against unjust aggressors, not against innocent people caught up in a war not of their making.”<sup>73</sup> By physically destroying an aggressive leader, military leadership targeting clearly meets both requirements.<sup>74</sup> Unequivocally, and without exception, in light of these moral precepts, military leadership targeting is by far a superior moral alternative to waging war or standing idly by while a tyrannical leader exploits the people of a nation through aggression or humanitarian crisis. Not only does military leadership targeting punish the culpable individual, it removes the morally condemning shackles of the ethical disconnect that the United States blindly endorses in its current absolutist approach to military leadership targeting.

As the World enters the New Millennium, the US must acknowledge its faulty moral absolutism with its inherent ethical disconnect. It cannot continue to play by a self-imposed higher set of rules than its adversaries if it is to remain a world leader.<sup>75</sup> As Roger G. Herbert writes, in his Masters Thesis entitled *Bullets With Names: The Deadly Dilemma*, “Moral absolutism can lead foreign policy into a position of defenselessness

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<sup>72</sup> US Catholic Bishops, “The Just War and Non-Violence Positions,” *War, Morality, and the Military Profession*, (Ed. Malham M. Wakin. Westview Press: Boulder and London, 1986). 239-255.

<sup>73</sup> Ibid, 250-251..

<sup>74</sup> A. W. Keller, *Targeting the Head of State During the Gulf War Conflict: A Legal Analysis*, (Naval War College, Newport, RI, May 1992) 25.

<sup>75</sup> Claburn, 102.

vis-à-vis the dangerous aspirations of governments or organizations which are not similarly constrained.”<sup>76</sup> America’s self-proclaimed moral high ground superiority is leading it into the very defenselessness of which Herbert warns. The leaders of The New Warrior Class, described in chapter one, do not pay homage to the US moral code and thus are not constrained by what the US considers amoral. In spite of this, the moral absolutists continue to believe that the US is morally superior and look down their noses at those who don’t have a self-reflecting moral outlook. Meanwhile, US enemy leaders are finding ways in which to use it to their advantage; like taking bold aggressive actions knowing their punishment will be indirect or by proxy because the moral absolutism does not allow direct attacks on them. More pointedly, this faulty moral absolutism forces the US to sanction the slaughter of innocents, either in war or while idly standing by during humanitarian crisis, while allowing murderous tyrants, who perpetrate such disaster, to live in safety as a protected leader under the guise of a head of state.

Throughout the twentieth century murderous criminals, acting as so called heads of state, have had free reign to exploit the citizens of their countries and cause massive pain and suffering around the World. These venerated criminals, who initiated aggressive wars of epic proportions and caused the slaughter of millions, have gone unpunished while the innocent masses have paid the ultimate price. A passage from Saint Augustine’s *City of God* demonstrates the ridiculousness behind the impunity of a head of state:

For, what are the bands of brigands but petty kingdoms? They are also groups of men, under the rule of a leader, bound together by a common agreement, dividing their booty according to a settled principle. If this band of criminals, by recruiting more criminals, acquires enough power to occupy regions, to capture cities, and to subdue whole populations, then it can with fuller right, assume the title of

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<sup>76</sup> Roger G. Herbert, *Bullets With Names: The Deadly Dilemma*, (Maters Thesis, Naval Post Graduate School (ADA 256210), June 1992), 137.

kingdom, which in the public estimation is conferred upon it, not by the renunciation of greed, but by the increase of impunity. The answer which a captured pirate gave to Alexander the Great was perfectly accurate and correct. When that king asked the man what he meant by infesting the sea, he boldly replied: 'What you mean by warring on the whole world. I do my fighting on a tiny ship, and they call me a pirate; you do yours with a large fleet, and they call you a (Head of State).'<sup>77</sup>

Democratic nations of the Twentieth Century, with their misplaced ideal of the head of state as a person whose life holds more value than the average person, have participated in the “perverse and cruel” activity of holding the innocent people of a nation responsible for the crimes perpetrated by their criminal leaders.<sup>78</sup> Who can legitimately argue that killing Hitler, Stalin, Mussolini, Saddam Hussein, or any other thug of their company would be morally wrong? The fact is, eliminating these criminals would have clearly provided a morally superior alternative to the abhorrent, devastating consequences of the wars and human suffering they created. Surely their elimination “would have lessened greatly the amount of total suffering in war and after war, hastened the processes of war termination, and fully coincided with the binding expectations of discrimination, proportionality, and military necessity.”<sup>79</sup>

It is truly unthinkable that an argument is made, based on the same moral principles related to the illegal activity of assassination, that still today the life of a head of state – guilty of crimes against humanity of the proportions witnessed in the Twentieth Century – holds higher value than the life of an innocent civilian, and that the life of the criminal head of state must be safeguarded without exception.<sup>80</sup> Using the moral precepts of honesty, fair play, and sanctity of life, this absolutist argument fails to see the hypocritical failing of such a policy. An unemotional analysis demonstrates that the

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<sup>77</sup> Saint Augustine, *The City of God*. (Edited by Vernon J. Bourke and translated by Gerald G. Walsh, Demetrius B. Zema, Grace Monahan, and Daniel J. Honan, Garden City, New York: Doubleday and Company, Inc., 1958), 88.

<sup>78</sup> Peters, *Fighting for the Future: Will America Triumph?*, 106.

<sup>79</sup> Beres, 306.

alternatives to legitimate military leadership targeting – war, covert operations, or international sanctions – are a greater violation of those same moral precepts. Removing the moral stigma of assassination from military leadership targeting provides operational and theater strategic commanders and planners with a decisive shaping option in which the moral precepts of proportionality and discrimination are far more justifiable than in major theater war, humanitarian crisis, or international sanction.

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<sup>80</sup> B.A. Ross, *The Case for Targeting Leadership in War*, (Naval War College, Newport, RI, Feb. 1992), 24 & 84.

## CHAPTER FOUR

### POLITICAL ISSUES

Nowhere is the duality of American politics more evident than in its approach to military leadership targeting as an aspect of the physical destruction element of command and control warfare. On the one hand, America's political leaders vehemently decry the targeting of individual enemies of the state, while on the other hand these same leaders order the military to conduct operations that target specific individuals for physical destruction. In the past twenty-five years, America's political leadership has specifically attacked, with intent to physically destroy, such notorious state enemies as Libya's Colonel Muamar Al-Qaddafi, Iraq's Saddam Hussein, and the international insurgent Osama bin Laden.<sup>81</sup> Each instance found American political leaders in a position where they could not reasonably explain their actions without seeming to violate stated or implied strictures and policies suggesting the attacks were nothing more than politically untenable assassination attempts. Instead of clearly establishing leadership targeting as a legitimate military operation, American politicians opted for a policy of duality – deny the intended target while offering some other proximate military targets as a pretense for the attack.<sup>82</sup>

The failure of US political leaders to separate legitimate military leadership targeting from assassination has caused political debate concerning the former to focus on

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<sup>81</sup> (1) Claburn, 105-106. (2) Risen, 3A.

<sup>82</sup> (1) Overholt, 4. (2) Parks, 6. Both Overholt and Parks provide legal justification for this with their identical opinions that "the death of an individual incidental to the attack of a military objective would not constitute assassination." (3) Nagel, 303. Nagel points out the theological basis for this concept as the Law of Double Effect: "Catholic moral theology seeks to make this distinction precise in a doctrine known as the law of double effect, which asserts that there is a morally relevant distinction between bringing about the death of an innocent person deliberately, either as an end in itself or as a means, and bringing it about as a side effect of something else one does deliberately...the law of double effect permits a certain amount of civilian carnage as a side effect of bombing munitions plants or attacking enemy soldiers."

emotional *prima facie* rebuttals of the political unacceptability of such an undemocratic act. Critics believe that military leadership targeting is merely political assassination by another name, and that engaging in such an activity detracts from the nation's international credibility and opens the door for in-kind retaliation, while providing no assurance that it will achieve its intended objective. When freed from the emotional bondage of assassination and considered in a rational manner on its own merits, the apparently ironclad political unacceptability of military leadership targeting is found to rest on assumptions of questionable validity.

The strongest political argument against military leadership targeting is that it will weaken US global credibility and subsequently detract from US international goals.<sup>83</sup> The assumption inherent in this argument is that just because the US claims it does not target foreign leaders for elimination, the International Community believes it. Reality is that the current circumlocution associated with military leadership targeting is far more detrimental to American global credibility and is a graver violation of American international goals than would be a clearly stated leadership targeting policy.<sup>84</sup> Take for example the duality associated with Operation El Dorado Canyon aimed at killing Muammar Kaddafi, the targeting of Saddam Hussein during Desert Shield and Desert Storm, and the targeting of Osama bin Laden's in Afghanistan; in each one of these cases the politicians in charge officially denied that the U.S. was targeting the leaders specifically, but unofficially stated that physical destruction was their goal.<sup>85</sup> In a 1995 *Studies in Conflict and Terrorism* article, Louis Rene Beres writes, "(Leadership

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<sup>83</sup> Herbert, viii.

<sup>84</sup> (1) Tom Carter, "Barr Would Restore U.S. License to Kill," *Washington Times*, (9 February 2001), 13. (2) Stuart Taylor, Jr., "Is the Assassination Ban Dead?", *National Journal* (Vol 30, 21 Nov. 1998), 2758-2759.

<sup>85</sup> (1) Livingston, 83. (2) Walter Shapiro and Richard Sandza. "Assassination: Is It a Real Option?" *Newsweek*, (28 April 1986), 21. (3) James Risen, "Bin Laden Was Target of Afghan Raid, U.S. Confirms," *New York Times*, (14 November 1998. Late Edition, East Coast), 3A. (4) Christopher Dickey, Mark Dennis, Gregory L. Vistica, and Russell

targeting), like war, will simply not go away. The point, therefore, is not to pretend and to manipulate, but to operate within clear constraints and jurisprudentially correct standards.”<sup>86</sup> Not only would a clearly stated military leadership targeting policy put offending leaders on notice and serve as a solid deterrent to aggressive acts against the US, but it would legitimize military leadership targeting in the eyes of the American public giving it a better chance of public support when called upon as a tool of international policy.<sup>87</sup>

International condemnation notwithstanding, critics believe that military leadership targeting would bring about retaliation-in-kind.<sup>88</sup> This argument assumes that US adversaries play by the same rules and are really concerned about whether or not the US actively engages in military leadership targeting. This is simply not true. Bin Laden and Hussein have both declared US Presidents as legitimate targets in their wars against the US regardless of US conventions against leadership targeting. Additionally, the retaliation argument assumes that US adversaries who are concerned about being targeted – first, can retaliate and second, will retaliate. The tight security and limited access of the most prominent leaders in the US make this highly unlikely. The failure of either bin Laden or Hussein to successfully target a US President supports this rebuttal. More likely than retaliation is that a clearly articulated military leadership targeting policy will act as a deterrent and prevent rogue leaders from engaging in activities that may place themselves at risk of being killed.<sup>89</sup> Finally, the retaliation argument rests heavily on the false assumption that enemy leaders do not currently engage in leadership targeting

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Watson. “How to Get Rid of Him,” *Newsweek*, (9 March 1998), 31.

<sup>86</sup> Beres, 307.

<sup>87</sup> (1) Herbert, 87. (2) Bradley S. Taylor, *Counter-Leadership Targeting and Conflict Termination*, (Naval Post Graduate School: Monterey, CA, June 1999), 110. (3) Whitaker, 22. Newsweek poll showed 71% of Americans supported attacks aimed at killing Kadaffi.

<sup>88</sup> (1) Bolcholz, 10. (2) Claburn, 105.

because the US has a stated policy that it does not engage in targeting them.<sup>90</sup> This assumption is flawed in that no other Democratic nations have such restrictive conventions on leadership targeting and none have reported any higher incidents than the US of targeting attempts by foreign entities on their political leaders.<sup>91</sup> There simply is no evidence available to suggest that not engaging in military leadership targeting has in any way encouraged adversaries to do the same.<sup>92</sup> The final analysis only suggests that by not engaging in a proactive military leadership targeting policy for fear of retaliation only denies the US a legitimate application of military force at the risk of possibly being targeted anyway.<sup>93</sup>

The threat of retaliation would have, critics argue, the secondary effect of unduly restricting access to American political leaders.<sup>94</sup> This argument assumes that US citizens currently have unrestricted access to their political leaders because the US publicly denies it engages in military leadership targeting. The reality is that access to most influential American political leaders is already highly restricted as a precautionary measure to ensure their safety. Consider how often the average American has had a personal audience with the President, a Cabinet member, a member of Congress, or even a State Governor. Consider also, the security precautions when such an audience is granted. The truth of the matter is the average American simply will not notice a difference in access to their political leaders if security around the leaders is increased because the US openly engages in legitimate military leadership targeting.

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<sup>89</sup> Herbert, viii.

<sup>90</sup> (1) Bradley S. Taylor, 110.

<sup>91</sup> (1) Jon Dupre, *Congress Sets Sights On Assassination Bill*, FOX News at [http://www.foxnews.com/politics/021401/assassin\\_dupre.sml](http://www.foxnews.com/politics/021401/assassin_dupre.sml), 14 February 2001. (2) The US President receives 300-500 death threats per month. No statistics are available on whether their origin, domestic or foreign, but certainly this creates a nearly impenetrable security net around the President.

<sup>92</sup> Bradley S. Taylor, 110.

<sup>93</sup> Ibid.

<sup>94</sup> Bolcholz, 13.

Aside from the fallacy of limited access due to the threat of retaliation, this stated fear of retaliation brings forth the issue of cowardly leadership. American leaders must not ask their people give their life to defend Democracy without themselves being willing to stand in harms way. Ralph Peters sums this up by writing, “The whispered warning that we do not condone (leadership targeting) because we do not want our own leaders (targeted) is a counsel of unspeakable cowardice.”<sup>95</sup> Leaders who would send thousands to die in war for their own safety should remember the famous words of President Kennedy, himself the victim of leadership targeting, “Ask not what your country can do for you, ask what you can do for your country.”

If the American public is to accept leadership targeting as a legitimate means of using military force, they must have sufficient confidence that such an approach would succeed in accomplishing its goal. Herein lay the most valid political argument against a proactive military leadership targeting policy. Due in part to the secret and conspiratorial nature in which most leadership targeting is conducted, very little empirical evidence is available to refute the argument that leadership targeting does not accomplish its goal and in fact, is likely to create a worse situation in that someone of greater evil may succeed the targeted leader.<sup>96</sup> Although, on the other hand, very little empirical evidence exists to suggest that a leadership targeting policy would not accomplish its goal. In reality, very little empirical evidence is available to prove that any intervention, whether war, support and stability operations, or peacetime engagement will accomplish its goal. As a matter of fact, debate surrounding United States’ intervention policies in Somalia, Iraq, and the Balkans suggest they were unsuccessful in achieving their intended objectives and caused

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<sup>95</sup> Ralph Peters, “A Revolution in Military Ethics,” *Parameters*, (Vol XXVI, No. 2, Summer 1996), 107.

<sup>96</sup> (1) Paul Garbutt, *Assassin! From Lincoln to Gandhi*, (Ian Allan Publishing: Runnymede, England, 1992), preface.

(2) Bolocholz, 13. This is one of the most common arguments against leadership targeting.

more harm than intervention via military leadership targeting would have.<sup>97</sup> Clearly, all intervention policies are inherently risky and walk the fine line of success or failure.

Analysis of leadership targeting as an effective means of intervention is restricted in that most studies available concerning the subject are moralistic, historical, or conspiratorial in focus.<sup>98</sup> Very few have focused on the military, political, or social impacts of legitimate military leadership targeting.<sup>99</sup> Although not resting wholly on empirical data or primary sources, some studies have suggested that a legitimate military leadership targeting policy does have potential to succeed if those contemplating its use conduct a detailed intelligence analysis, follow strict rules of engagement, refuse *Realpolitik* interference, gain public support by having a stated policy, and make the National Command Authority the sole body responsible for authorizing its use.<sup>100</sup> As stated earlier, no intervention policy is empirically proven or is without risk. As such, the lack of empirical evidence proving that a leadership targeting policy would be effective should not be a sole deterrent to implementation. Rather, the United States should adopt a military leadership targeting policy that demands strict adherence to a solid set of criteria that would provide reasonable assurances that the policy objectives could be achieved and targeting abuses avoided.

Intervention utilizing military leadership targeting is not a panacea. Essential to its success is the nature of the organization a particular target is leading. Bradley Taylor, in a Naval Post Graduate School theses analyzing the impact of organizational design on leadership targeting concludes that, “(Leadership targeting) is a strategy that should not be taken without specific analysis of the organization targeted. All organizations have

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<sup>97</sup> (1) Anderson, 8. (2) David Cortright, and George A. Lopez. “Are Sanctions Just? The Problematic Case of Iraq,” *Journal of International Affairs*, (Vol 52:2, Spring 1999, New York), 735-748.

<sup>98</sup> James W. Clarke, *American Assassins: The Darker Side of Politics*, (Princeton University Press: NJ, 1982), 7.

<sup>99</sup> Havens, 6.

differing degrees of vulnerability to (leadership targeting). Some organizational characteristics will prevent the strategy from succeeding regardless of the leader targeted.”<sup>101</sup> Taylor finds that organizations with clearly established leader transition processes like those found within the US government are less susceptible to leadership targeting than are organizations established on the personality and energy of a sole individual. Taylor continues his conclusion, “...the wide variance in organizational structures plays as great a role in determining success or failure of the strategy as the leader himself. Without systematic analysis of the targeted organization’s characteristics it is impossible to determine if (leadership targeting) will provide useful leverage.”<sup>102</sup> Failure to properly assess the characteristics of the targeted organization may unintentionally lead to counterproductive political consequences like creating a martyr or replacing the targeted leader with a more intolerable successor.

Related to the characteristics of the organization targeted is the level of war at which that organization operates. Providing the most sensitive argument against military leadership targeting, critics contend that leadership targeting aimed at leaders of operational and national strategic level organizations cannot be separated from assassination. The argument is that the political impact of eliminating such leaders makes it inherently impossible to consider them as purely military in nature.<sup>103</sup> Undoubtedly, this is where analysis of the target becomes most critical. Albeit, eliminating operational and strategic level leaders would have profound political impact, such impact does not mean a purely military justification is not possible.<sup>104</sup> If the

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<sup>100</sup> (1) Beres, 303. (2) Brandenburg, 675.

<sup>101</sup> (1) Bradley S. Taylor, 74. (2) Havens, 40. These authors call a similar impact the “political capability” of the targeted leader on the organization.

<sup>102</sup> Bradley, 74.

<sup>103</sup> O’Brian, 89.

<sup>104</sup> Parks, 6.

operational or strategic leadership targeting were solely based on clearly established support to a belligerent force in an environment of conflict, the targeting would be legitimate.<sup>105</sup> It must be emphasized that under no conditions would *Realpolitik* motives justify a military strike against a leader. The only motives for targeting leadership at any level are to prevent war or humanitarian crisis, to provide a decisive advantage in conflict, or to facilitate conflict termination. Any other motive makes leadership targeting simply assassination.

Once all the aforementioned political obstacles are overcome, leadership targeting critics still see problems in finding someone to do the job. Leadership targeting, they argue, is a risky, costly, complex operation that requires detailed intelligence and in-depth planning to succeed.<sup>106</sup> Who, they plead, has the resources and cold-blooded mentality to carry out such an operation? First, it must be mentioned that any intervention to prevent war or humanitarian crisis would be a risky, costly, and complex operation requiring detailed intelligence and in-depth planning to succeed. Believing otherwise is simply ridiculous. Secondly, the question posed is best answered in terms of who is best suited for the job. Certainly one organization should not attempt military leadership targeting on its own; rather the President, the National Security Council, the State Department, the Central Intelligence Agency (CIA), the Justice Department, and the Department of Defense (DOD) should pool their vast resources to successfully implement a leadership targeting policy. All of these agencies have intricate intelligence networks that can fully analyze the political impacts of a particular situation in which military leadership targeting is contemplated. Within the Department of Defense are the material resources, planning conventions, and personnel trained to carry out such a

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<sup>105</sup> (1) Walzer, 146. (2) Murphy, 346.

mission. Finally, the legal use of military force demands that, beyond planning, only the military can execute the policy. Calling on any other agency to execute a military leadership targeting policy, government or civilian, would immediately push it into the illegal realm of assassination.

Critics will argue that by giving sanction for the various Federal Agencies to assist the military in planning the targeting of a leader, and specifically giving the military the go-ahead to execute, is paramount to providing the military with a license to kill.<sup>107</sup> As Ralph Peters reminds them, “in addition to acting as a deterrent, the reason the US has a military is to kill when necessary, the operative question is who gets killed?”<sup>108</sup> More importantly though, the critics of military leadership targeting must “understand that military effectiveness is not synonymous with human slaughter.”<sup>109</sup> The military can, with its precision weapons systems and advanced training, actually conduct detailed operations with exacting efficiency. But, for some unexplainable reason, both the moral absolutists and the politically correct find comfort in the antiseptic killing of faceless, nameless innocents from afar, and recoil at the idea of giving a target a specific identity, “regardless of the fact that the individual in question is a monster or that his death might save thousands, perhaps even millions of lives.”<sup>110</sup> A distant bomb, or protracted war that kills countless numbers is tolerable, but a bullet directed at an individual with a name is immoral and politically unacceptable.<sup>111</sup> When, on occasion, they do target a specific individual, the politically correct choose to risk US global credibility by opting for a policy of duality to justify their actions.

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<sup>106</sup> (1) Bulcholz, 10-15. (2) Claburn, 102-105. (3) Herbert, viii.

<sup>107</sup> Peters, *Fighting for the Future: Will America Triumph*, 112.

<sup>108</sup> Ibid, 109.

<sup>109</sup> John G. Heidenrich, “The Gulf War: How Many Iraqis Died,” *Foreign Policy* (Vol 90, Spring 1993), 124.

<sup>110</sup> Livingston, 82.

<sup>111</sup> Peters, 104-113.

To avoid this risk to American global credibility, the US must adopt an openly stated policy of military leadership targeting that is implemented within clear constraints and jurisprudently correct standards. This open policy would put US adversaries on notice that they will be held responsible for their actions, thus providing the US with a credible deterrent to war or humanitarian crisis. Essential to the success of such a policy would be reliance on a detailed intelligence analysis of a potential target, strict rules of engagement, no *Realpolitik* interference, cooperation among Federal agencies, military only execution, and sole approval authority for operational and strategic level targets resting with the National Command Authority. An openly stated policy – considered debated, and vetted by responsible government entities and other appropriate parties – free of the negative political stigma of assassination would provide operational and strategic level planners with a decisive shaping option which would ensure flexibility, surprise, and asymmetric advantage across the full spectrum of military operations.<sup>112</sup>

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<sup>112</sup> These discussions/debates would not seek consensus; rather they would provide legitimacy to the targeting policy.

## CHAPTER FIVE

### CONCLUSION

The US is entering the 21<sup>st</sup> Century without peer in the realm of conventional militaries. This dominance creates an extreme asymmetric environment in which emerging adversaries – operating in an atmosphere of “tremendous moral freedom, unconstrained by laws, internationally recognized treaties, and ‘civilized’ customs” – will use any means they can to counter America’s advantages.<sup>113</sup> Although the US has the technological and physical means to counter this threat, current legal, moral, and political conventions do not allow their exploitation by theater and operational level military planners. Specifically, planners are reluctant to use military leadership targeting as an aspect of the physical destruction element of command and control warfare to eliminate enemy leaders. This reluctance is a direct result of the association of legitimate military leadership targeting with the illegal activity of assassination.

This association finds its genesis in a vague US policy, issued as a Presidential Executive Order, which bans Federal Government employees from plotting or participating in the assassination of a foreign leader. The original executive order banning “political” assassination was specifically designed to preclude US intelligence agencies from independently engaging in peacetime efforts to murder, for purely political reasons, foreign leaders unfriendly to the US.<sup>114</sup> The cloak-and-dagger murders, exposed by the Church Committee, which gave reason for the order, were clearly outside acceptable legal, moral, and political conventions of both domestic and international behavior. When President Carter dropped the word “political” from the ban, he

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<sup>113</sup> Peters, *Revolution in Military Ethics*, 105.

<sup>114</sup> Zengel, 145.

intentionally or not, broadened the concept to include all killings of individual foreign leaders, including those deemed legitimate military targets.<sup>115</sup>

This broadening resulted in what critics of military leadership targeting deemed the inextricable association of military leadership targeting with the negative stigma of assassination. Since the removal of the word “political” from the executive order banning assassination, US political and military leaders have been hesitant to openly use military leadership targeting as an application of military force for fear of moral condemnation and political backlash. As such, America’s leaders needlessly complicate US security arrangements by preventing the National Security Council, Department of Defense, and other Federal Agencies from frankly discussing leadership targeting as an option when applying military force to prevent war or humanitarian crisis, to create a decisive advantage in war, or to facilitate war termination.<sup>116</sup>

Interpreting and applying the ban outside the original context in which it was promulgated is not in concert with international, domestic, or military conventions concerning military leadership targeting. Article 51 of the United Nations Charter, the Antiterrorism and Effective Death Penalty Act of 1996, and various military regulations provided sufficient justification to legally disassociate legitimate military leadership targeting from assassination. These international and domestic conventions providing legal justification for leadership targeting make available the basis for the moral and political disassociation as well.

Moral considerations weigh heavily in whether or not military leadership targeting is an acceptable application of military force. The legal distinction between assassination

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<sup>115</sup> Jonathan M. Fredman, “Covert Action, Loss of Life, and the Prohibition on Assassination, 1976-96 (U),” *Studies in Intelligence – Unclassified Edition*, (Vol. 1, Center for the Study of Intelligence, Washington, D.C. 1997), 16.

<sup>116</sup> Shirley, A14.

and leadership targeting allows for a balanced moral examination of the latter based on the precepts of Just Conduct in War. The tenants of Just Conduct in War, proportionality and discrimination, clearly support an aggressive military leadership targeting policy. Proportionality requires that the “response to aggression must not exceed the nature of the aggression” and discrimination requires that responses to aggression “must be directed against unjust aggressors, not against innocent people caught up in a war not of their making.”<sup>117</sup> By physically destroying an aggressive leader, military leadership targeting clearly meets both requirements.<sup>118</sup>

Establishing the moral acceptability of military leadership targeting allows for the political feasibility of such an action. Current political reservations concerning military leadership targeting have resulted in a duality that risks US global credibility in that although American leaders have clearly opted for targeting enemy leaders, they do not admit to such activity. An openly stated leadership targeting policy would eliminate this risk, as well as act as a credible deterrent by putting potential enemy leaders on notice that if they choose to violate international conventions against aggressive wars or creating humanitarian crisis that threaten US vital interests the US will hold them personally responsible. Concerns about retaliation and restricted access to political leaders if the US were to declare an open military leadership targeting policy are not valid in light of the fact that emerging adversaries do not play by the same legal, moral, or political rules, thus will not act in kind based on stated US policies. Security surrounding US political leaders is already so restricted because of the unpredictability of US adversaries that US

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<sup>117</sup> US Catholic Bishops, 250-251..

<sup>118</sup> A. W. Keller, *Targeting the Head of State During the Gulf War Conflict: A Legal Analysis*, (Naval War College, Newport, RI, May 1992) 25.

citizens are unlikely to notice any additional security requirements based on an open military leadership targeting policy.

In order for the US to withstand the long-term political ramifications, both domestically and internationally, of leadership targeting, it must be based on strict criteria that will ensure its success as well as prevent its abuse. The following recommended criteria provided a foundation for formulating national policy and military doctrine to implement an open military leadership targeting policy:<sup>119</sup>

- An environment of conflict must exist. The US must only act under the provisions of self-protection provide in Article 51 of the United Nations Charter. Action under this article provides for action against force, action against a hostile or aggressive act, as preemptive self-defense action against a hostile or aggressive act, as action against a continuing threat, and as action to prevent a humanitarian crisis that threatens vital national interests.
- The intended target must be providing direct support to hostile forces, whether military or terrorists.
- Only the US military can execute the actual destruction of the target. This does not preclude collaborative planning and intelligence sharing among other agencies.
- Action must be limited to offending person only.
- Action must be in concert with the Just Conduct in War precepts of proportionality and discrimination.
- *Realpolitik* influences must be avoided.

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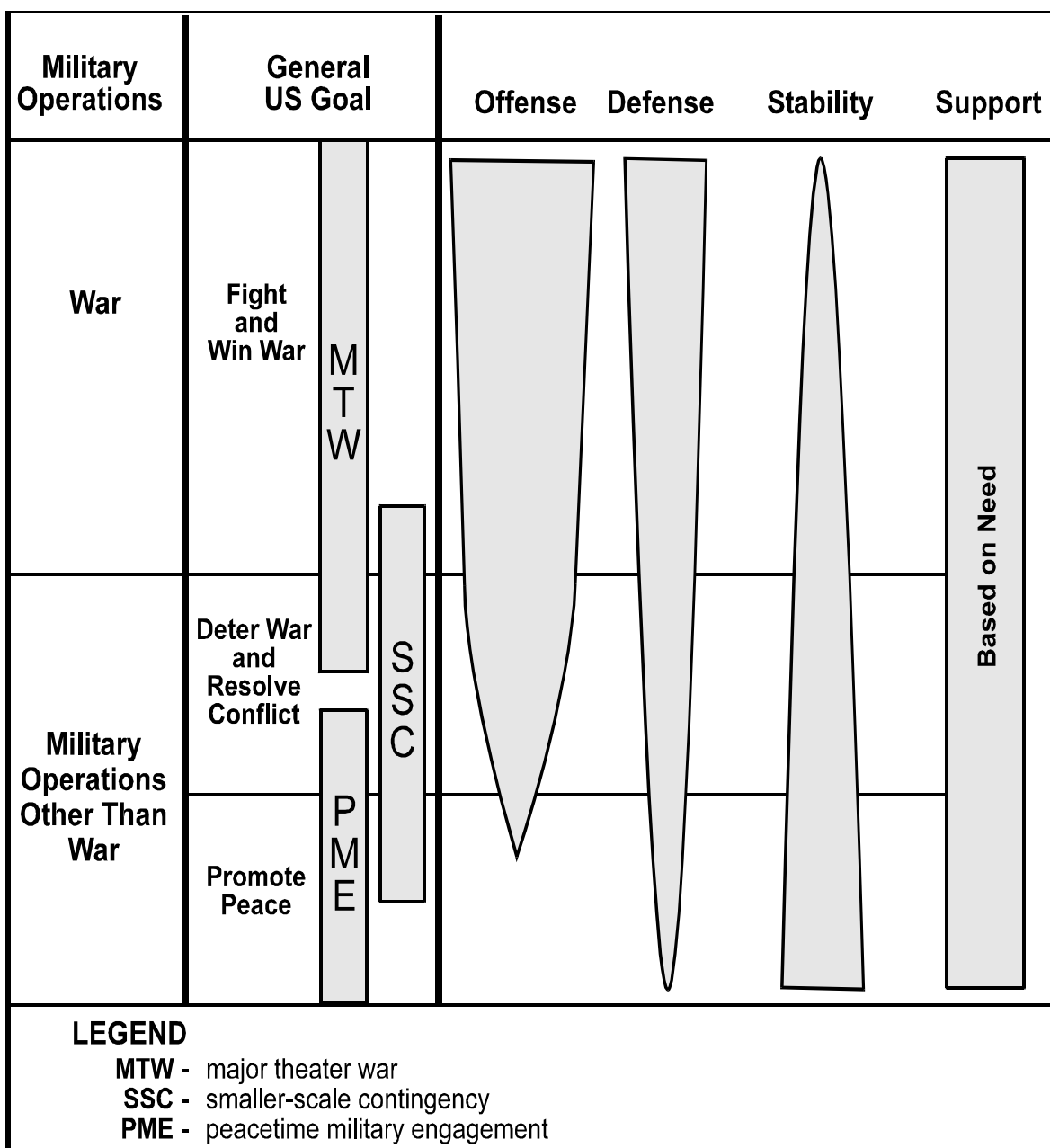
<sup>119</sup> See Appendix B.

Any application of military leadership targeting outside these parameters would constitute assassination and thus open the US to valid international condemnation.

The legal, moral, and political disassociation of military leadership targeting from assassination provides the US with a legally, morally, and politically admissible shaping operation at both the theater strategic and operational levels of war. Utilizing it effectively, with strict jurisprudence and moral clarity, will ensure the US does not unnecessarily engage in wars of massive destruction and human suffering like those of the 20<sup>th</sup> Century. Clearly, military leadership targeting is not a panacea; rather it is one of many applications of military force that should be considered when planning operations against an enemy for whom treachery is routine and rule of law is meaningless.

## APPENDIX A

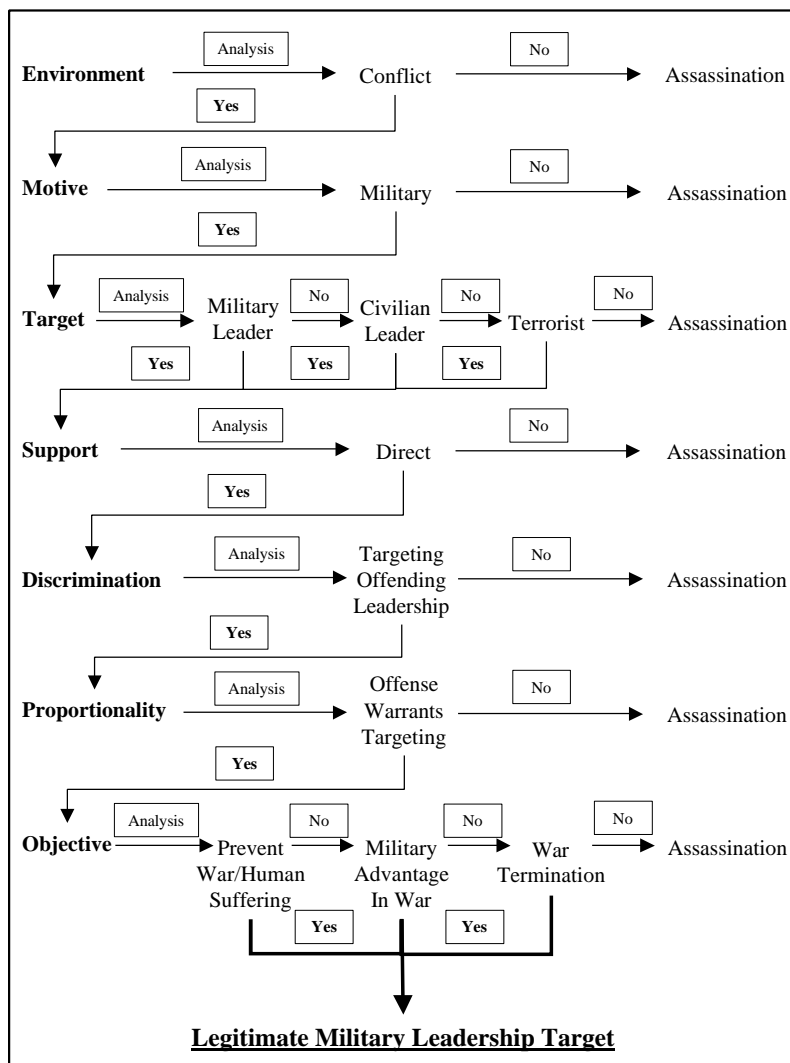
### THE RANGE OF MILITARY OPERATIONS



Student Text 3-0, *Operations*, US Army Command and General Staff College, Fort Leavenworth, KS, 1 Oct 2000.

## APPENDIX B

### MATRIX OF MILITARY LEADERSHIP TARGETING VERSUS ASSASSINATION



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